THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
Appeal From Order No. 1001 Of 2001
(Old No. FAFO 19 of 1990)

1. The Divisional Forest Officer, Purbi Tarai Divison, Haldwani, District Nainital.
2. State of U.P. through Collector, Nainital.

……Appellants.

Versus

1. Smt. Basanti Lohni, aged 37 years
   Widow of the deceased.
2. Km. Tara Lohni, aged 16 years, minor, daughter
   Of the deceased.
3. Km. Hema Lohni, aged 14 years,
   Minor, daughter of the deceased.
4. Km. Kusum Lohni, aged about 12 years,
   Minor, daughter of the deceased.
5. Mr. Dherender Lohni, aged 10 years,
   Minor, son of the deceased.
6. Km. Rashmi Lohni, aged 6 years,
   Minor, daughter of the deceased.
   Respondent Nos. 2, 3, 4, 5 and 6 through their next Friend, natural guardian and mother, respondent no. 1 Smt. Basanti Lohni.
   All resident of New Colony, Heera Nagar, Haldwani District Nainital. (Claimants)

…..Respondents.

Sri Nand Prasad, learned Standing Counsel for the appellants.
None appeared for the respondents despite sufficient service.

Date June 06, 2006.

PC: Hon'ble B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act*)** is directed against the judgment and award dated 21-9-1989, passed by the Motor Accident Claims Tribunal/III Addl. District Judge, Nainital **(*for short the Tribunal*)** in M.A.C. Petition No. 13 of 1988, Smt. Basanti Lohni and others Vs. State of U.P. and another, whereby the learned Tribunal has awarded compensation of Rs. 1,20,000/- along with interest @ 10% per annum in favour of the claimants as against the opposite parties-appellants.

Relevant facts giving rise to the present appeal are that Sri Chandra Ballabh Lohani lost his life in a motor accident, which occurred on 30-5-1986 involving ill-fated Jeep No. UPH-6471 at the open railway crossing at Indra Nagar, Haldwani due to rashness and negligence on the part of its driver. According to the claimants the deceased was serving as Deputy Ranger in the Forest Department and was getting Rs. 1282.60 per month as salary. On the fate-ful day, the jeep in question struck with the Passenger Train No. 66 which was coming from Kathgodam, with the result the deceased suffered fatal injuries and died while being taken to hospital at Haldwani. It was stated that the deceased was having sound physique and he would have supported the claimants during his life time had he not lost his life in the accident. Compensation of Rs. 3,00,000/- has been claimed for the death of the deceased.

Both the opposite parties-appellants filed joint written statement and admitted the factum of accident and consequent death of the deceased as a result of fatal injuries. It was stated that the deceased had come to Haldwani without permission leaving his place of duty. According to them, when the jeep reached the Railway Crossing, the driver of the jeep could not see the running train coming from Kathgodam and the jeep being on the railway tracks met with the accident of no fault of its driver.

On the pleadings of the parties, following issues were framed by the learned Tribunal:-

1. Whether the deceased C.B.Lohani died in the accident in question on 30-5-1986 due to the rash and negligent driving of he driver of vehicle no. UPH 6471?

2. To what amount of compensation, if any, the claimants are entitled?

Learned Tribunal after recording the evidence of the parties and perusing the same took up Issue No.1 for decision. The

learned Tribunal after scrutinizing the entire evidence on the point in detail, came to the conclusion that the jeep driver did not care to watch the incoming train, though the driver who appeared as D.W.2 in the witness box had admitted that he realized the arrival of the train only when the vehicle was dashed against the train. It was accordingly found that the driver was not vigilant, while negotiating the railway tracks. It was held that the accident resulting in the death of the deceased was the outcome of the negligence on the part of the jeep driver. On Issue No.2, the learned Tribunal after considering the evidence on the issue of quantum of compensation came to the conclusion that the claimants were entitled to Rs. 1,17,000/- towards loss of dependency and in addition, a sum of Rs. 3,000/- towards mental shock and ultimately, the petition was decreed for a sum of Rs. 1,20,000/-, as mentioned earlier.

In the memo of appeal, the impugned award has been assailed mainly on the ground of maintainability of the claim petition under Section 110-A of the Act as well as on the point of quantum of compensation.

I have heard learned Standing Counsel and have gone through the entire material on record.

So far as the contention that the petition under Section 110-A of the Act is not maintainable, the learned Standing Counsel has not advance any argument on this score. Moreover, this point was not pressed before the Tribunal at the time of framing of issues, though the appellants have participated in the proceedings throughout before the Tribunal. Now, the only question to be determined in this appeal is whether the Tribunal has awarded just compensation or not.

It is admitted that the deceased Chandra Ballabh Lohani was posted as Deputy ranger in the Forest Department and was getting Rs. 1,282/- as monthly salary. He was aged 42 years at the

time of his accidental death. The learned Tribunal has deducted a sum of Rs. 382.00 towards personal expenses of the deceased while computing loss of dependency. It is evident from the impugned judgment that the learned Tribunal has determined the compensation as Rs. 900/- x 12 multiplied by the remaining service of 13,10/12 years, which came to Rs. 1,17,000/-. Even if the schedule appended to the Second Schedule of Section 163-A of the new Act is applied and the monthly loss of dependency of the claimants is worked out after deducting 1/3rd from the monthly salary of the deceased, the pecuniary loss will thus comes to Rs. 1282/- (-) 427 = Rs.855/- per month and annual loss will come Rs. 855 x 12= 10,260/. If the Second Schedule is taken a guideline, the deceased being 42 years of age, the multiplier of 15 shall e applicable. Thus, the loss of dependency will come 10,260/- x 15= Rs. 1,53,900/-. It may be taken for granted that the claimant-widow was getting family pension on account of death of the deceased, therefore, the amount of compensation of Rs. 1,17,000/- towards pecuniary loss is fully justified. I accordingly hold that since the accident had taken place on 30-5-1986, the amount of compensation awarded by the Tribunal is adequate and just. Since the claimant has not come forward to contest the appeal, I hold that compensation awarded by the Tribunal is just and proper and the finding of the learned Tribunal does not call for interference by this Court.

No other point was urged or argued before me.

Accordingly, the appeal deserves to be dismissed and is hereby dismissed. The impugned award dated 21-9-1989 is upheld. No order as to costs.

(B.S. Verma, J.)

RCP

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Review Application No. 185 of 2006
Delay Condonation Application No.9571 of 2006
Arising from Appeal from Order No. 1001 of 2001
(Old No. FAFO 19 of 1990)

1. The Divisional Forest Officer, Purbi Tarai Divison, Haldwani, District Nainital.
2. State of U.P. through Collector, Nainital.

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   Respondent Nos. 2, 3, 4, 5 and 6 through their next Friend, natural guardian and mother, respondent no. 1 Smt. Basanti Lohni.
   All resident of New Colony, Heera Nagar, Haldwani District Nainital. (Claimants)

…..Review petitioners-**Respondents.**

Sri J.C. Pande, Adv., learned counsel for the claimants-review petitioners.
Sri Bhupender Singh, learned Standing Counsel for the State-O.Ps.

Date August 03, 2006.

Heard learned counsel for the claimant-review petitioners as well as learned Standing Counsel for the O.P.-appellants on the application for condonation of delay in filing the review petition. Grounds mentioned in the affidavit are sufficient to condone the delay. Delay is condoned. Review petition is admitted. Both the parties are ready to argue the matter on merit

today. Heard them and perused the entire material and the averments made in the review petition.

The review petition has been filed by the claimants on the ground that on June 06, 2006, the claimant-respondents were not represented in the court and the appeal preferred by the owner of the vehicle-State was dismissed. It has been contended that the cross-objection filed by the claimant-respondents were on record. The learned counsel for the review petitioners confined his prayer only to correct the calculation mistake, which is apparent on the fact of record, i.e. the Tribunal has assessed loss of dependency @ Rs. 900/- per month and it was to be calculated for 13 years and 10 months, thus, on calculation it comes to 900 x 166 = Rs. 1,49,400/- and besides this amount Rs. 3,000/- were also awarded towards mental shock. Thus, even by working out the amount of compensation as awarded by the Tribunal, the total thus comes to Rs. 1,52,400/- instead of Rs. 1,17,000/-. The mistake is bona fide and arithmetical in nature. Accordingly, the review petition is liable to be allowed and the claimants are entitled to total compensation of Rs. 1,52,400/- instead of Rs. 1,20,000/-.

Accordingly, the review petition is allowed. The impugned award is modified to the extent that the claimants shall be entitled to compensation of Rs. ***1,52,400/-*** instead of Rs. ***1,20,000/-*** along with interest @ 10% as awarded by the learned Tribunal. The impugned order is modified to that extent. Consequently, the order dated 06-06-2006 passed in A.O. No. 1001 of 2001 Divisional Forest Officer and another Vs. Smt. Basanti Lohni and others stands modified.

(B.S. Verma, J.)

03-08-2006
RCP